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EXAMINER

PIZIALI, ANDREW T

ART UNIT

PAPER NUMBER

1771

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

SUPPLEMENTAL EXAMINER'S ANSWER

Ground of Rejection A: Claims 2-9, 20-22, 24-38, 40-46, 48, and 49 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement:

The appellant asserts that the 35 U.S.C. 112 rejection is improper because the examiner "reads" a precise mathematical relationship into the claims, and then rejects the claims as not being enabled. The examiner respectfully disagrees. The appellant incorrectly states that the examiner reads a precise mathematical relationship into the claims, rather, the examiner contends that there is no discernable trend in the data disclosed by the current specification and therefore one skilled in the art is not enabled to make (reproduce) and/or use the invention. For example, in code 1 (Example 1) in Table 3, each web "rep" (individual sample taken from a single finished nonwoven web) is made with the same fibers and by the same process, yet the top side formation index varies from 23.7 to 49.9 while the bottom side formation index varies from 17.9 to 46.9. In some samples the top side formation index is greater than the bottom side formation index while in other samples the top side formation index is less than the bottom side formation index. The "formation index" property claimed by the appellant varies so greatly that any attempt to reproduce the claimed invention would result in tests results that would also vary greatly from those experienced by the inventors. Based on the claimed property failing to follow any discernable trend, one skilled in the art would not be enabled to make (reproduce) and/or use the invention. It is noted that the appellant failed to show, or attempt to show, that an attempt to reproduce the claimed invention would result in tests results that would not vary greatly from those experienced by the inventors.

Art Unit: 1771

Ground of Rejection C: Claims 1-15, 19-22, 24-30, 34-38, 40-46, 48, and 49 are rejected under 35 U.S.C. 102/103 as obvious over Pike et al. (U.S. Patent No. 5,382,400).

The appellant asserts that the examiner incorrectly equates the prior art hot FDU process with a cold FDU process because page 8 of the Answer states that Pike discloses a cold FDU process. The examiner respectfully disagrees. Although page 8 of the Answer incorrectly states that Pike discloses a cold FDU process, page 7 of the Answer clearly states that the examiner agrees with the appellant that Pike utilizes a hot FDU process. The examiner requests that the BPAI recognize that the page 8 statement was made in error and the first sentence of the last paragraph should read: "These cited portions of the specification clearly disclose that Example 14 was produced according to the teachings of Pike (hot FDU production)...."

In response to the examiner asserting that at least one nonwoven material taught by Pike inherently possesses the claimed formation index (rep 1 of code 14), the appellant asserts that the claimed formation index of fabric 14 (code 14) has to be determined from an average of 20 samples (reps) rather than from a single sample of fabric 14. The appellant is arguing that fabric 14, as a whole, does not possess the claimed formation index, but the examiner already agrees with this assessment. The appellant fails to recognize the actual issue at hand, which is that sample 1 of fabric 14 is a standalone nonwoven material clearly possessing the claimed formation index property (see Table 3). Sample 1 was cut from fabric 14 during the testing process (see page 20, lines 14 and 15). The examiner admits that fabric 14, as a whole, does not possess the claimed formation index property (based on the average values for code 14 in Table 3), but many cut portions (such as rep 1) do possess the claimed formation index property.

For the above reasons, it is believed that the rejections should be sustained.

972 11/01/07

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